81-1033

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No. .....

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

ST. JOE PAPER COMPANY,

Petitioner,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, in and for the City and County of San Francisco, and ESPRIT DE CORP.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

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QUESTIONS PRESENTED

1. Under the due process clause of the fourteenth amendment, does a third party's use of a product within a state, which use is unrelated to the cause of action, allow that state to assert personal jurisdiction over a foreign manufacturer in a state antitrust suit?

2. Under the due process clause of the fourteenth amendment, may a state base personal jurisdiction over a nonresident on the controverted jurisdictional allegations in the plaintiff's complaint?

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

St. Joe Paper Company (hereinafter "St. Joe") petitions for a writ of certiorari to review the judgment of the California Supreme Court in this case.

OPINIONS BELOW

The order of the California Supreme Court denying a hearing in this case is unreported. It is reproduced as Appendix A.

The opinion of the California Court of Appeal, First District, reproduced as Appendix B, is reported at 120 Cal. App. 3d 991, 175 Cal. Rptr. 94 (Ct. App. 1981).

JURISDICTION

The California Supreme Court denied a timely petition for hearing on September 2, 1981, App. A, after the California Court of Appeal, First District, denied St. Joe's petition for a writ of mandate to review the decision of the Superior Court of the State of California, App. B at B-2. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The fourteenth amendment to the United States Constitution provides, in relevant part:

> . . .(N)or shall any State deprive any person of life, liberty, or property, without due process of law . . . .

The California Code of Civil Procedure, Section 410.10, provides:

> A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.

The California Business and Professions Code, Section 16750(a), provides:

> Any person who is injured in his business or property by reason of anything forbidden or declared unlawful by this chapter, may sue therefor in any court having jurisdiction in the county where the defendant resides or is found, or any agent resides or is found, or where service may be obtained, without respect to the amount in controversy, and to recover three times the damages sustained by him, and shall be awarded a reasonable attorneys' fee together with the costs of the suit.
>
> Such action may be brought by any person who is injured in his business or property by reason of anything forbidden or declared unlawful by this chapter, regardless of whether such injured person dealt directly or indirectly with the defendant.

STATEMENT OF THE CASE

The plaintiff below, respondent Esprit de Corp., filed this class action under the Cartwright Act, California's state antitrust statute, in San Francisco Superior Court against the petitioner and 33 other manufacturers of corrugated containers.[1] Using the indirect purchaser provision of the Cartwright Act, California Business and Professions Code §16750(a), Esprit alleged that the 34 manufacturers had conspired to fix the prices of corrugated containers.[2] Though it did not make any purchases from the defendants, Esprit claimed to have bought corrugated containers through wholesalers or distributors to which the defendants sold. App. C at C-3.

On September 2, 1980, St. Joe filed in the Superior Court a timely motion to quash service of summons for lack of personal jurisdiction. St. Joe supported its motion to quash with an affidavit from its vice president pointing out that St. Joe was a Florida corporation, that it had never sought to qualify to do business in California, that it maintained no office or plants in California, that the nearest St. Joe plant was in Dallas, Texas, that St. Joe owned no real property or other assets in California, and that no St. Joe officer or employee had ever resided in California.[3] The California Court of Appeal's opinion in this case further summarized the extent of St. Joe's limited contacts with California, based on the affidavit submitted by St. Joe:

> Three or four times a year, two of St. Joe's salesmen have been sent to California to call on national companies that do business in other states in addition to California. The calls made by such salesmen in California do not result in

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[1] In addition to the petitioner, defendant Consolidated Packaging Corporation was a party to the proceedings before the Court of Appeal, and it filed a separate petition to the California Supreme Court.

[2] The complaint filed by Esprit de Corp. is reproduced as Appendix C.

[3] The affidavit filed by St. Joe is reproduced as Appendix D.

any sales in California, as all of the resulting orders are for corrugated containers to be purchased from the St. Joe plant where they are produced and used locally.

One direct purchaser from St. Joe, E.S.B., Inc., ships corrugated containers from a St. Joe plant to California. E.S.B. is headquartered in Philadelphia, Pennsylvania. E.S.B's purchase orders for containers originate in Philadelphia, and all of its payments to St. Joe are made from there. The containers to fill such orders are manufactured at St. Joe's Memphis, Tennessee plant. E.S.B. takes title to the goods at the plant and directs destination and shipment by common carrier; these shipments may go to any of 16 states, including California.

St. Joe Paper Co. v. *Superior Court*, 120 Cal. App. 3d 991, 994-95, 175 Cal. Rptr. 94, 96 (Ct. App. 1981). App. B at B-3. Esprit de Corp. filed no affidavit in opposition.

After an October 2, 1980 hearing, at which St. Joe argued the unconstitutionality of assuming personal jurisdiction in such circumstances, the superior court denied St. Joe's motion to quash on November 4, 1980. The court produced no recorded opinion.

St. Joe then filed with the California Court of Appeal a petition for a writ of mandate, seeking to compel the superior court to grant St. Joe's motion to quash. St. Joe again challenged personal jurisdiction on federal due process grounds. The court of appeal initially denied St. Joe's petition, but the California Supreme Court returned the petition to the court of appeal with directions to consider it more fully. After a hearing, the court of appeal issued its opinion denying the petition on June 26, 1981. App. B.

In the only opinion thus far produced in this case, the court of appeal found that service upon St. Joe under the California long-arm statute would not offend the due process clause of the fourteenth amendment. That long-arm statute permits California courts to exercise jurisdiction "on any basis not inconsistent with the Constitution of this state or of the United

States." Cal. Civ. Proc. Code § 410.10. Noting that E.S.B. purchases corrugated containers from St. Joe for use in California, among other states, the court concluded that "St. Joe regularly sells boxes to E.S.B. with the knowledge that they will be used in California." 120 Cal. App. 3d at 995, 175 Cal. Rptr. at 96. App. B. at B-3—B-4. The court considered this contact with California a sufficient basis for asserting personal jurisdiction over St. Joe in light of Esprit's allegations that "each of the paper companies was engaged in an out-of-state price-fixing conspiracy to injure California consumers . . . and reaped unusually high profits as a result of its unlawful activity." *Id.* Requiring St. Joe to defend against these allegations in California comported with due process, in the court's view, since California subjected state antitrust violations to "special regulation" under its indirect purchaser statute. *Id.* at 996-97, 175 Cal. Rptr. at 97. App. B. at B-5. Moreover, foreign activities which "entail foreseeable effects in a forum state may be sufficient to satisfy the minimum contacts requirement" imposed by due process. *Id.* at 997, 175 Cal. Rptr. at 97-98. App. B at B-6. Here, the court said, St. Joe and its co-defendants had "elected to indirectly serve the market in California." *Id.* at 999, 175 Cal. Rptr. at 99. App. B. at B-9.[4] The court rejected, therefore, St.

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[4] The clarity of the Court of Appeal's analysis suffers from its collective references to "the paper companies," meaning St. Joe and protesting co-defendant Consolidated Packaging Corporation, 120 Cal. App. 3d at 993, 175 Cal. Rptr. at 95. App. B at B-2. For example, the Court of Appeal's opinion states that "the paper companies admittedly elected to indirectly serve the market in California and made sales and deliveries at artificially fixed prices that allegedly harmed California consumers." *Id.* at 999, 175 Cal. Rptr. at 99. App. B at B-9. St. Joe, however, has not admitted making any sales, directly or indirectly, to California consumers. It has only admitted making sales to one Pennsylvania consumer (E.S.B., Inc.) which *uses* St. Joe containers in California, among other states. App. D.

The due process requirements for personal jurisdiction, of course, "must be met as to each defendant over whom a state court exercises jurisdiction." *Rush* v. *Savchuk*, 444 U.S. 320, 332 (1980).

Joe's constitutional challenge to the assertion of personal jurisdiction.

Reiterating its due process challenge to personal jurisdiction, St. Joe filed a petition for hearing with the California Supreme Court, which denied the petition, without recorded opinion, on September 2, 1981. App. A.

REASONS FOR GRANTING REVIEW

I. THE LOWER COURT'S DECISION THAT CALIFORNIA MAY CONSTITUTIONALLY ASSUME PERSONAL JURISDICTION OVER ST. JOE CONFLICTS WITH THE APPLICABLE DECISIONS OF THIS COURT.

Since *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945), this Court has interpreted the due process clause as requiring that nonresident defendants have such "minimum contacts" with the forum state that its assertion of personal jurisdiction over them will not offend "traditional notions of fair play and substantial justice." *Id.* at 316 (quoting *Milliken* v. *Meyer*, 311 U.S. 457, 463 (1940)). This "minimum contact" analysis focuses on "the relationship among the defendant, the forum, and the litigation." *Shaffer* v. *Heitner*, 433 U.S. 186, 204 (1977). Thus, due process requires sufficient contacts between the defendant and the forum on the subject matter of the plaintiff's claim.

In the only written opinion in this case, the California Court of Appeal identified three potential contacts between St. Joe and the forum state. First, the court recited in its factual introduction that St. Joe sent two salesmen into California, three or four times a year, to call on national companies doing business there. Those calls resulted, however, in no sales in California. 120 Cal. App. 3d at 994, 175 Cal. Rptr. at 96. App. B at B-3. Secondly, the court noted that E.S.B., Inc., one of St. Joe's out-of-state purchasers, *used* St. Joe's containers in 16 states, including California. *Id.* at 995, 175 Cal. Rptr. at 96. App. B at B-3.

Finally, the court cited Esprit's allegations that "each of the paper companies was engaged in an out-of-state price-fixing conspiracy to injure California consumers" in violation of California antitrust law. *Id.* at 995, 175 Cal. Rptr. at 96. App. B at B-4. Thus, the lower courts' finding of a sufficient basis for personal jurisdiction over St. Joe rests on occasional sales visits to the state, use of the product there by one foreign purchaser, and the plaintiff's unsupported allegations.[5]

The court of appeal did not emphasize, understandably, the sales visits, which were totally unrelated to California purchasers. Indeed, its opinion fails to mention the sales visits again after its introduction of the facts of the case. Those visits produced no sales in California, let alone any sales to the plaintiff or to any member of its class. In fact, they did not even bear any relationship to E.S.B.'s out-of-state purchases of St. Joe products for use in the state. Thus, like the stock on which Delaware tried to base personal jurisdiction over nonresident corporate officers in *Shaffer*, St. Joe's occasional sales visits to California are "not the subject matter of this litigation, nor is the underlying cause of action related ...." 433 U.S. at 213. Reliance by the court of appeal on the unrelated sales visits, then, would have strayed from this Court's focus on "the relationship among the defendant, the forum, and the litigation," *id.* at 204.

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[5] Though Esprit had urged the point upon the trial court, the court of appeal properly declined to rely upon (indeed, did not mention in its opinion) the fact that a special jury verdict in another corrugated container case had termed St. Joe a co-conspirator. St. Joe had settled nearly a year before that trial and did not participate in it. Moreover, the special verdict reference to St. Joe sheds no light on the personal jurisdiction issue here, the extent of St. Joe's contacts with California. In fact, the trial court noted in approving the settlement that "there was no evidence from the criminal trial and, apparently, little or no evidence before the grand jury of price exchanges on the West Coast." *In re Corrugated Container Antitrust Litigation*, 1981-1 Trade Cas. ¶ 64,114, at 76,693 (S.D. Tex. 1981), *aff'd*, Nos. 80-1103, 80-1018 (5th Cir. Oct. 29, 1981).

The court of appeal's opinion does, however, appear to rely heavily upon the fact that one of St. Joe's out-of-state customers, E.S.B., used some of its purchased containers in California. Believing that "St. Joe regularly sells boxes to E.S.B. with the knowledge that they will be used in California," the court concluded that St. Joe had "availed [itself] of the privilege of conducting activities that invoked the benefits and protections of the laws of this state." See 120 Cal. App. 3d at 995, 999, 175 Cal. Rptr. at 96, 99. App. B at B-3, B-9. Yet that reliance on the fortuitous use of St. Joe's product within the state conflicts with this Court's recent decisions.

The Court established in *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286 (1980), that the mere use of a product within a state, even if foreseeable, would not support personal jurisdiction over the seller. In *World-Wide Volkswagen*, the Court found unconstitutional Oklahoma's assertion of personal jurisdiction over a New York retailer and a Northeastern distributor of a car which, according to plaintiffs, had design defects responsible for personal injuries that occurred in Oklahoma. The Court determined that although the use of the car in Oklahoma may have been foreseeable, foreseeability alone would not support personal jurisdiction under the due process clause. Rather, the essential criterion was that "the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." *Id.* at 297. That test of due process, the Court said, "allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *Id.*

The constitutionality of California's exercising personal jurisdiction in this case, however, hangs by the same thin thread of foreseeable use. Here, as in *World-Wide Volkswagen*, the forum state has based its exercise of personal jurisdiction on the fact that the defendant's product made its way into the state *after*

final purchase. The court of appeal found that one of St. Joe's out-of-state purchasers, E.S.B., which is headquartered in Philadelphia, Pennsylvania and which negotiated its purchases there, App. D at D-2, took title at a Memphis, Tennessee plant and directed shipment of its purchases to 16 states, *one* of which was California. The court did not find that St. Joe solicited or encouraged use of its boxes by E.S.B. in California, or that it sold any boxes in California, directly or indirectly. Indeed, St. Joe has never received any payments from E.S.B. in California, nor has it sent any employee there to make sales or service calls on E.S.B. App. D at D-2. Furthermore, the court did not find that St. Joe directed advertising of its boxes to California consumers, through national media or otherwise. In short, the court recited no facts showing that St. Joe "purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws," *Hanson* v. *Denckla*, 357 U.S. 235, 253 (1958). Rather, the court based its constitutional conclusion on the "fortuitous circumstance," *World-Wide Volkswagen*, 444 U.S. at 295, that one foreign buyer uses some of St. Joe's products in California. As a result, the decision below conflicts with this Court's holding in *World-Wide Volkswagen*.

In addition, by seizing upon a *third party's* use of St. Joe's product in California, the decision below conflicts with this Court's decision in *Shaffer*. In *Shaffer*, the Court held that Delaware could not constitutionally assume personal jurisdiction over corporate officers, in a shareholder's derivative suit alleging fiduciary breaches elsewhere, on the ground that the defendants' stock in the corporation had a statutory presence in Delaware. 433 U.S. at 213. That Delaware property, the Court pointed out, "is not the subject matter of this litigation, nor is the underlying cause of action related to the property." *Id.* Nor could the plaintiff in *Shaffer* "identify any act related to his cause of action as

having taken place in Delaware." *Id.* Thus, Delaware's assumption of personal jurisidiction ignored *International Shoe's* three-cornered analysis of the relationship among "the defendant, the forum, and the litigation," *Shaffer*, 433 U.S. at 204.

Here as in *Shaffer*, the forum state has seized upon a contact unrelated to the litigation. E.S.B.'s use of some of St. Joe's products in California has nothing to do with the plaintiff's class action on behalf of indirect purchasers, for E.S.B. is simply an end-user of St. Joe boxes. In fact, Esprit has made no prima facie showing, nor did the court of appeal find, that either Esprit or any member of its class has ever bought a container produced by St. Joe — either directly, or through a wholesaler or distributor. Thus, E.S.B.'s use of St. Joe's products in California is, like St. Joe's occasional sales calls on others there, wholly unrelated to Esprit's cause of action. *Cf. Toro Co.* v. *Ballas Liquidating Co.*, 572 F.2d 1267, 1271 (8th Cir. 1978) (sustaining dismissal of federal antitrust suit, on due process grounds, where "claim sued upon is unrelated to the defendant's forum activities"); *Amba Marketing Systems, Inc.* v. *Jobar International, Inc.*, 551 F.2d 784, 789 (9th Cir. 1977) (under due process clause, "the claim must be one which arises out of, or results from, the defendant's activities within the forum"). Personal jurisdiction based upon this unrelated use clashes with the insistence in *Shaffer* that the defendant's contact with the forum have some relationship to the plaintiff's cause of action.

In relying heavily upon an unrelated use of St. Joe's boxes in California, therefore, the decision below bases personal jurisdiction on a contact found constitutionally insufficient in *World-Wide* and *Shaffer*. The former case required more than mere foreseeable use in the forum state, and the latter required some relationship between the defendant's contact with the forum and the plaintiff's cause of action. Here, the decision below rests upon mere foreseeable use, unrelated to the plaintiff's cause of action.

II. THE LOWER COURT HAS DECIDED, IN A MANNER CONFLICTING WITH THE DECISIONS OF SEVERAL FEDERAL COURTS OF APPEAL AND STATE COURTS OF LAST RESORT, AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

The opinion of the California Court of Appeal, the only full opinion in this case, makes clear that the lower courts relied heavily upon the unsubstantiated allegations in the plaintiff's complaint. In rejecting St. Joe's challenge to personal jurisdiction under the due process clause, the court of appeal stated that "the paper companies admittedly elected to indirectly serve the market in California and made sales and deliveries at artificially fixed prices that allegedly harmed California consumers." 120 Cal. App. 3d at 999, 175 Cal. Rptr. at 99. App. B at B-9. As a result, said the court, "they reaped an unusually high profit at the expense of California consumers." *Id.* Yet in St. Joe's case, the defendant paper company had only conceded two potential contacts with California: unrelated sales visits that resulted in no sales in California, and use of St. Joe boxes in California by third party (E.S.B.) which purchased them elsewhere. In fact, St. Joe filed a motion denying personal jurisdiction and offered a supporting, still-uncontroverted affidavit. Thus, the court of appeal can only have relied upon Esprit's own allegations in finding, as jurisdictional contacts, "sales and deliveries" by St. Joe that produced "unusually high profit at the expense of California consumers." Indeed, the court's opinion characterized the issue as one of "foreign state activity *allegedly* causing harm in California . . . ." *Id.* at 996, 175 Cal. Rptr. at 97. App. B at B-5. (emphasis added). Thus, the lower courts relied upon the plaintiff's unsubstantiated allegations in finding personal jurisdiction over St. Joe to be constitutional.

This reliance on mere allegations, however, presents an important due process issue never directly resolved by this Court. In *McNutt* v. *General Motors Acceptance Corp.*, 298 U.S. 178 (1936), the Court did consider, as a matter of interpreting the federal jurisdictional statutes,[6] the plaintiff's burden in regard to subject matter jurisdiction. Requiring dismissal of a case in which the plaintiff failed, in the face of a challenge, to do more than *allege* a sufficient amount in controversy, the Court declared: "If his allegations of jurisdictional facts are challenged by his adversary in any appropriate manner, he must support them by competent proof." *Id.* at 189. Though *McNutt* dealt with subject matter jurisdiction, the federal courts have uniformly applied the same burden to plaintiffs arguing personal jurisdiction. *See, e.g., Amba Marketing Systems, Inc.* v. *Jobar International, Inc.*, 551 F.2d 784, 787 (9th Cir. 1977); *Product Promotions, Inc.* v. *Cousteau*, 495 F.2d 483, 491 (5th Cir. 1974). Indeed, many federal district courts have even placed that burden upon the plaintiff in cases construing state long-arm statutes. *See* 2 *Moore's Federal Practice* ¶ 4.41-1[3], at 4-471 to 4-472 (2d ed. 1948). Nevertheless, this Court has never explicitly held that due process requires plaintiffs in state courts, when employing a state long-arm statute, to show jurisdictional facts. Thus, the Court has not directly addressed the constitutionality of using mere allegations to establish personal jurisdiction over nonresidents.

This due process issue goes, however, to the core of the guarantees made in *International Shoe* and its progeny. Clearly, state court dependence on the plaintiff's own allegations, even though controverted and unsubstantiated, would effectively

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[6] The Court in *McNutt* relied most directly upon the former provisions of 28 U.S.C. §80, now largely contained in Fed. R. Civ. P. 12(h)(3) and 28 U.S.C. §§1359, 1447 (1976). Those provisions required federal district courts to dismiss or remand whenever it appeared that they lacked subject matter jurisdiction or that parties had been improperly joined.

undermine the due process limits on personal jurisdiction over nonresidents. If the plaintiff's assertions can themselves assume constitutional significance, potential defendants cannot hope to "structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit," *World-Wide Volkswagen*, 444 U.S. at 297. Rather, every corporation dealing in interstate commerce will run an added, immeasurable risk that plaintiffs in each state can make an *allegation* of jurisdictional contacts. The cost of that added risk can soar in substantive areas of state law like antitrust, with its possibilities of treble damages and class actions. Attaching constitutional, jurisdictional significance to the plaintiff's allegations, then, could make of *every* state one into which nonresident corporations "should reasonably anticipate being haled," *id.*

This due process issue will likely assume even more importance in the future. Increasingly, states are extending the reach of their long-arm statutes to the constitutionally permissible limit.[7] Courts in such states could hardly be expected to

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[7] Besides California, states having extended their long-arm statutes to the limits of federal due process include, for example, Arizona, *Phillips* v. *Anchor Hocking Glass Corp.*, 100 Ariz. 251, 413 P.2d 732 (1966); Idaho, *Doggett* v. *Electronics Corp. of America, Combustion Control Division*, 93 Idaho 26, 454 P.2d 63 (1969); Kansas, *Whisenant* v. *Whisenant*, 219 Kan. 387, 548 P.2d 470 (1976); Illinois, *Nelson* v. *Miller*, 11 Ill. 2d 378, 143 N.E.2d 673 (1957); Michigan, *Schneider* v. *Linkfield*, 389 Mich. 608, 209 N.W.2d 225 (1973); Minnesota, *Northern States Pump & Supply Co.* v. *Baumann*, 311 Minn. 368, 249 N.W.2d 182 (1976); New Hampshire, *Roy* v. *North American Newspaper Alliance, Inc.*, 106 N.H. 92, 205 A.2d 844 (1964); New Jersey, *Litton Industrial Systems, Inc.* v. *Kennedy Van Saun Corp.*, 117 N.J. Super. Ct. 52, 283 A.2d 551 (1971); Oklahoma, *Carmack* v. *Chemical Bank New York Trust Co.*, 536 P.2d 897 (Okla. 1975); Pennsylvania, *Deere* v. *Zilber*, 234 Pa. Super. Ct. 273, 338 A.2d 615 (1975); Rhode Island, R.I. Gen. Laws §9-5-33; Texas, *U-Anchor Advertising, Inc.* v. *Burt*, 553 S.W.2d 760 (Tex. 1977); Utah, *Foreign Study League* v. *Holland-American Line*, 27 Utah 2d 442, 497 P.2d 244, *cert. denied*, 409 U.S. 1060 (1972); and Vermont, *Bard Building Supply Co., Inc.* v. *United Farm Corp.*, 137 Vt. 125, 400 A.2d 1023 (1979).

turn down, once the notion were sanctioned, a plaintiff's plea that his *allegations* against a nonresident, though unsubstantiated, show sufficient jurisdictional contacts. Furthermore, many states may emulate California's reaction to this Court's restrictions on indirect purchaser claims under the Sherman Act, *see Illinois Brick Co.* v. *Illinois*, 431 U.S. 720 (1977), and enact their own cause of action for indirect purchasers.* Combined with a constitutional deference for the plaintiff's own allegations, such indirect purchaser statutes would effectively erase meaningful limits on long-arm jurisdiction. Plaintiffs in a state like California, as this case illustrates, could hale into court any east coast manufacturer dealing in interstate commerce: the potential plaintiff need only purchase the future defendant's product somewhere (if only for *use* within the state) and then make the appropriate allegations of participation in a conspiracy affecting the product's price. In effect, such plaintiffs would enjoy nationwide service of process for the trial of price-fixing conspiracy cases in state court. Thus, the question of the due process significance of a plaintiff's allegations is of immense concern to every corporation dealing in commerce.

This Court's guidance on that issue assumes added importance in view of the conflict on the matter among federal circuit courts and state courts of last resort. Contrary to the lower court's reliance on the plaintiff's allegations in this case, a number of such courts have stated that mere allegations of conspiracy cannot consistent with the due process clause, support jurisdiction over a nonresident defendant. Those decisions suggest a result in conflict with the result below.

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* The court of appeal's opinion in this case noted that the California legislature added an indirect purchaser provision to the state's antitrust laws "immediately after" *Illinois Brick*. 120 Cal. App. 3d at 996, 175 Cal. Rptr. at 97. App. B at B-5 — B-6. *See* Comment, *The California Legislature Steers the Antitrust Cart Right Off the* Illinois Brick *Road*, 11 Pac. L.J. 121 (1979).

For example, the Sixth Circuit held that due process requires more than mere allegations in *Chrysler Corp.* v. *Fedders Corp.*, 643 F.2d 1229 (6th Cir. 1981), *petition for cert. filed on other grounds*, 50 U.S.L.W. 3005 (U.S. July 14, 1981) (No. 80-2222). In that case, plaintiff Chrysler alleged that the defendants conspired to manipulate the nonautomotive air-conditioning market in violation of federal antitrust law. It sought to obtain personal jurisdiction over a Spanish defendant, Interclisa, under the Michigan long-arm statute, claiming that Interclisa's supposed co-conspirators had performed acts in furtherance of the conspiracy in Michigan. After noting that the Michigan long-arm statute extended as far as due process allowed, the court of appeals nevertheless affirmed the dismissal of the case against Interclisa:

> Chrysler's allegation of a conspiracy including Interclisa and the Fedders defendants is unsupported by any factual assertions. In support of its motion to dismiss, Interclisa filed two affidavits of its managing director, Alfredo Calzada Atienza. Those affidavits state, in pertinent part, that Interclisa was not involved in the contract negotiations between Chrysler and Fedders and had no knowledge of or connection with any conspiracy. Chrysler did not submit counter-affidavits and, as the trial court pointed out, offered no reason to doubt any of the statements in Mr. Calzada's affidavits. Under these circumstances we hold that Chrysler's totally unsupported allegations of conspiracy cannot constitute sufficient contacts with Michigan to justify an exercise of personal jurisdiction over Interclisa by the District Court.
>
> Similarly, the allegation of conspiratorial activities with tortious consequences in the forum state is insufficient to support jurisdiction under the long-arm statute in the absence of some minimal factual showing of Interclisa's participation in the conspiracy.

643 F.2d at 1237. Thus, regardless of the validity of Chrysler's "conspiracy theory" of jurisdiction, the court said, it had failed to substantiate its allegations.

Similarly, the Tenth Circuit Court of Appeals insisted on more than mere allegations in *Baldridge* v. *McPike, Inc.*, 466 F.2d 65 (10th Cir. 1972). There the plaintiff salesmen sued their former employer and other defendants, only one of which was qualified to do business in the state where the district court sat, for allegedly conspiring to deny them benefits and to defame them. In the face of plaintiffs' arguments that "personal jurisdiction of one conspirator gives personal jurisdiction of all parties to the conspiracy," the court upheld the dismissal of the case as to all but the resident defendant:

> Mere allegation of conspiracy, without some sort of prima facie factual showing of a conspiracy, cannot be the basis of personal jurisdiction of co-conspirators outside the territorial limits of the court. The requirement of a prima facie showing is necessitated by the minimum contacts requirement of *International Shoe Co.* v. *Washington* and its progeny.

466 F.2d at 68 (cites omitted). The Tenth Circuit Court of Appeals, then, concurred with the Sixth Circuit in requiring, under the due process clause, a more substantial jurisdictional contact than mere allegations.

Decisions by the Second and Ninth Circuit Courts of Appeal are to the same effect. *See H.L. Moore Drug Exchange, Inc.* v. *Smith, Kline & French Laboratories*, 384 F.2d 97, 98 (2d Cir. 1967) (in a antitrust case, "presence of one co-conspirator within the jurisdiction does not give jurisdiction over all who are alleged to be co-conspirators"); *Amba Marketing Systems, Inc.* v. *Jobar International, Inc.*, 551 F.2d 784, 789 (9th Cir. 1977) (due process not satisfied without evidence of sales of defendant's product in forum state). In short, at least four federal courts of appeal have rendered decisions that conflict with the decision in this case.

Finally, at least three state courts of last resort have cited *McNutt* in turning down personal jurisdiction resting on mere allegations. In *State ex rel. Sweere* v. *Crookham*, 289 Or. 3, 609

P.2d 361 (1980) (en banc), a resident corporation served a non-resident individual under the Oregon long-arm statute, alleging a failure of the defendant's personal guaranty on a corporate contract. The defendant moved to quash service for lack of personal jurisdiction and, in a supporting affidavit, denied any related contacts with Oregon. The plaintiff filed no counter-affidavits. After citing *McNutt* for the proposition that the plaintiff shoulders the "burden of coming forward with the 'jurisdictional facts,'" *id.* at 7, 609 P.2d at 363, the court observed that "the record does not show" that the resident plaintiff relied on the guaranty; that "there is no evidence" that the guaranty caused any business consequences in Oregon; and that "the record does not show" that the individual defendant had control over or an interest in the corporation involved. *Id.* at 9, 609 P.2d at 364. Thus, concluded the court, "because of the due process restrictions of the Fourteenth Amendment, the [long-arm provision] cannot be constitutionally applied to provide that the plaintiff can obtain jurisdiction over defendant." *Id.* at 11, 609 P.2d at 365. Thus, the Oregon Supreme Court, interpreting the due process limits on personal jurisdiction, declined to rest on mere allegations.

The Arizona Supreme Court, also sitting en banc, reached the same result in *Maloof* v. *Raper Sales, Inc.*, 113 Ariz. 485, 557 P.2d 522 (1976). There the plaintiffs, using the Arizona long-arm rule, filed a personal injury action against Indiana and Ohio companies which had worked on their recreational vehicle. After citing *McNutt*, the court held that the plaintiffs "have failed to make even a prima facie showing that the Arizona courts may exercise personal jurisdiction over appellees consistent with due process." *Id.* at 487, 557 P.2d at 524. The court explained:

> First, appellants present no information as to the nature and size of defendants' businesses which would indicate that it is fair to require them to defend the suit in Arizona. Second, appellants allege that Mr. Maloof is injured and

> unable to work but present no further information as to their economic status and inability to travel to Indiana and Ohio to bring suit. Third, appellants do not present enough information for us to determine whether the nature of the cause of action makes it fair to require appellees to defend in Arizona.

Id. at 488, 557 P.2d at 525. The court sustained, therefore, the trial court's dismissals without prejudice. Like the Oregon court, then, the Arizona Supreme Court refused to resolve a due process challenge to personal jurisdiction by relying on the plaintiff's allegations. *Accord, State ex rel. Anaya* v. *Columbia Research Corp.*, 92 N.M. 104, 583 P.2d 468 (1978) (plaintiff must support challenged jurisdictional allegations with competent proof).[9]

Thus, the decision below not only presents an important federal issue, but it conflicts with holdings in several federal courts of appeal and state courts of last resort. The due process significance, if any, of mere allegations in personal jurisdiction cases is an issue which has not been, but should be, settled by this Court.

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[9] Without citing *McNutt*, the Supreme Court of Utah also concluded recently that "plaintiff cannot solely rely on allegations of jurisdiction in its complaint in the face of an affadavit by defendant which specifically contradicts those general allegations." *Roskelley & Co.* v. *Lerco, Inc.*, 610 P.2d 1307, 1311 (Utah 1980). *Contra, Texair Flyers, Inc.* v. *District Court*, 180 Colo. 432, 506 P.2d 367 (1973) (plaintiff need only allege sufficient jurisdictional facts in complaint, despite affadavit challenging jurisdiction).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDICES

APPENDIX A

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING
SAN FRANCISCO, CALIFORNIA 94102

September 2, 1981

I have this day filed Order

HEARING DENIED

In re: 1 Civ. No. 51171-72

ST. JOE PAPER CO., ET. AL.

VS.

SUPERIOR COURT, S.F.

Respectfully,

Clerk

APPENDIX B

IN THE

Court of Appeal

OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

ST. JOE PAPER COMPANY,
Petitioner,
v.
SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO,
Respondent.

1 CIV. No. 51171
(S.CT. No. 750975)

ESPRIT DE CORP.,
Real Party In Interest.

CONSOLIDATED PACKAGING CORPORATION,
Petitioner,
v.
SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO,
Respondent.

1 CIV. No. 51172
(S. CT. No. 750975)

ESPRIT DE CORP.,
Real Party In Interest.

These petitions for writs of mandate,[1] pursuant to Code of Civil Procedure section 418.10, subdivision (c), seek review of

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[1] Initially, we denied both writs; our Supreme Court subsequently granted a hearing and retransferred them to us with directions to grant the alternative writ.

the superior court's denial of the motions to quash service[2] filed by the nonresident defendant corporations, Consolidated Packing Company (Consolidated) and St. Joe Paper (St. Joe), collectively paper companies. The paper companies are two of 34 foreign corporate defendants named by the real party in interest, Esprit de Corp. (Esprit) in its class action (No. 750975) filed under this state's anti-trust statute, the Cartwright Act (Bus. & Prof. Code § 16720, et seq.), alleging a national conspiracy to fix the prices of corrugated containers purchased by Esprit from out-of-state wholesalers or distributors, and delivered in California. The paper companies contend that Esprit has not met its burden of proving jurisdiction, as Esprit's allegations of nationwide conspiracy and their activities in California are not sufficient "minimum contacts" to provide a basis for in personam jursidiction under this state's long arm statute, Code of Civil Procedure section 410.10.[3] We do not agree and conclude that for the reasons set forth below, both petitions must be denied.

The petitions allege the following pertinent facts, which are not in dispute: Consolidated, a Michigan corporation with its principal place of business in Chicago, Illinois, is engaged in manufacturing corrugated containers at three plants located in Battle Creek, Michigan, Flint, Michigan, and Pulaski, Tennessee. Consolidated's western-most offices are in Chicago, Illinois. It has never sought to qualify to do business in California and

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[2] Only the motions to quash service are before us at this time. Initially, the petitions also sought a stay. However, in No. 51173, we denied a writ seeking a stay on March 6, 1981, on substantially similar grounds as to one of the other foreign corporate codefendants, Alton Box Board Company. No petition for a hearing was filed in No. 51173, and our decision is now final. Like the court below, we have been asked to take judicial notice of our files in No. 51173, and do so.

[3] The statute provides: "A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States."

has not owned any real property here. Consolidated had no business dealings with Esprit, and never has entered into any contract in California.

Consolidated, however, has made one sale to a California resident. In March, 1974, Consolidated received an unsolicited telephone call at its Chicago office from Julius Goldman Egg City of Moore Park, California, for the purchase of corrugated containers at a cost of $29,412.90. The containers were shipped to Julius Goldman Egg City for its own use.

Consolidated also sells corrugated materials to the United States Government General Services Administration (GSA) in Michigan. The GSA buys corrugated materials from Consolidated in Battle Creek, Michigan, and ships some of these materials into California. Consolidated also sold corrugated cartons to California Canners, Inc.

St. Joe is a Florida corporation. Three or four times a year, two of St. Joe's salesmen have been sent to California to call on national companies that do business in other states in addition to California. The calls made by such salesmen in California do not result in any sales in California, as all of the resulting orders are for corrugated containers to be purchased from the St. Joe plant where they are produced and used locally.

One direct purchaser from St. Joe, E.S.B., Inc., ships corrugated containers from a St. Joe plant to California. E.S.B. is headquartered in Philadelphia, Pennsylvania. E.S.B.'s purchase orders for containers originate in Philadephia, and all of its payments to St. Joe are made from there. The containers to fill such orders are manufactured at St. Joe's Memphis, Tennessee plant. E.S.B. takes title to the goods at the plant and directs destination and shipment by common carrier; these shipments may go to any of 16 states, including California. St. Joe regularly sells boxes to E.S.B. with the knowledge that they will be used in California.

Esprit alleged that over a period of 11 years, each of the paper companies were engaged in an out-of-state price-fixing conspiracy to injure California consumers, in violation of the Cartwright Act, and reaped unusually high profits as a result of its unlawful activity.

The Judicial Council's comments to section 410.10 relating to service on foreign corporations, so far as pertinent, declare: "A state has power to exercise judicial jurisdiction over a foreign corporation which has done, or has caused to be done, an act in the state with respect to any cause of action in tort arising from such . . . unless the nature of the act and of the corporation's relationship to the state make the exercise of such jurisdiction unreasonable. . . .

"A *state [has] power to exercise judicial* jurisdiction over a foreign corporation *which causes effects in the state by an* omission or *act done elsewhere with respect to causes* of action arising from these effects, unless the nature of the effects and of the corporation's relationship to the state make the exercise of such jurisdiction unreasonable." (Emphasis added.)

In *Sibley* v. *Superior Court,* 16 Cal. 3d 442, 446, our Supreme Court agreed and stated in pertinent part: "The mere causing of an 'effect' in California, however, as acknowledged in the Judicial Court comment quoted above, is not necessarily sufficient to afford a constitutional basis for jurisdiction; notwithstanding this 'effect,' the imposition of jurisdiction may be 'unreasonable.' As was held in *Internat. Shoe Co.* v. *Washington, supra,* 326 U.S. 310, a suit may not be maintained where jurisdiction offends ' "traditional notions of fair play and substantial justice." ' *(Id.,* at pp. 316-317 [90 L.Ed. at pp. 101-103] citations omitted.)"

The furthest extension of jurisdiction on the basis of foreign state activity allegedly causing harm in California are *Quattrone* v. *Superior Court,* 44 Cal. App. 3d 296, and *United California*

Bank v. *First Bank of Oak Park*, 98 Cal. App. 3d 439 (U.S. cert. den.) In *Quattrone*, the court upheld the exercise of jurisdiction over a nonresident defendant, a Pennsylvania resident, who had prepared deceptive financial data intended to be acted upon in California to determine the rate of exchange for corporate shares to be issued in this state. After discussing *Hanson* v. *Denckla*, 357 U.S. 235, and *McGee* v. *International Life Ins. Co.*, 355 U.S. 220, the court stated the rule governing the exercise of jurisdiction on such a basis as follows: "From *McGee* and *Hanson* we conclude that it is reasonable to exercise jurisdiction on the basis of the defendant intentionally causing 'effects in the state by an omission or act done elsewhere' whenever (a) the effects are of a nature 'that the State *treats as exceptional and subjects to special regulation,*' or (b) the defendant has, *in connection with his causing such effects in the forum state, invoked 'the benefits and protections of its laws'.*" (*Quattrone, supra*, at p. 306; emphasis added). In *United California Bank, supra*, this court followed *Quattrone* and held reasonable the exercise of jurisdiction over a foreign bank which issued a certificate of deposit, knowing the borrower would take it to California and use it as security for a loan and that the security would be worthless because of the bank's right of offset. We based our conclusion on: 1) the bank did an intentional act, knowing it would cause effects in California, the nature of which California deems exceptional and subject to special regulation; 2) the bank anticipated an economic benefit from its act which caused the effect in this state.

Here, as in *Quattrone*, and *United California Bank*, both *supra*, this state treats anti-trust violations as subject to the special regulation of the Cartwright Act. We note that immediately after the U.S. Supreme Court in *Illinois Brick Co.* v. *Illinois*, 431 U.S. 720, limited the jurisdiction of the federal courts to adjudication of direct purchase anti-trust damage actions, the California Legislature amended Business and Professions Code section 16750 to add the second paragraph of

subdivision (a), as set forth, so far as pertinent, below.[4] (Stats. 1978, ch. 536, § 1.) Thus, Esprit, as an indirect purchaser, was precluded from raising its Cartwright anti-trust claims against the paper companies in any forum except California.[5] (Cf. Code Civ. Proc., § 410.30.)

The minimum contacts of a defendant with a state need not arise from actual physical activity of the defendant in a forum state. Activities taking place in other states which entail foreseeable effects in a forum state may be sufficient to satisfy the minimum contacts requirements of *International Shoe Co., supra.* (See *Great Western United Corp.* v. *Kidwell* (5th Cir. 1978) 577 F.2d 1256, 1266; *Wilkerson* v. *Fortuna Corp.*, 544 F.2d 745, 747; *Travis* v. *Anthes Imperial Limited*, 473 F.2d 515; *Eyerly Aircraft Co.* v. *Killian*, 414 F.2d 591; *Hitt* v. *Nissan Motor Company, Ltd.*, 399 F.Supp. 838, vacated on other grounds 552 F.2d 1088; *Maricopa County* v. *American Petrofina, Inc.*, 322 F.Supp. 467; *In-Flight Devices Corporation* v. *Van Dusen Air, Inc.* (6th Cir. 1972) 466 F.2d 220).

Maricopa, supra, is helpful here as there the nonresident corporate defendant was served with a complaint alleging its participation in an anti-trust price-fixing conspiracy in California that injured an Arizona plaintiff. In affirming the

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[4] "(a) Any person who is injured in his business of property by reason of anything forbidden or declared unlawful by this chapter, may sue therefor in any court having jurisdiction in the county where the defendant resides or is found, or any agent resides or is found, or where service may be obtained, without respect to the amount in controversy, and to recover three times the damages sustained by him, and shall be awarded a reasonable attorneys' fee together with the costs of the suit.

"Such action may be brought by any person who is injured in his business or property by reason of anything forbidden or declared unlawful by this chapter, *regardless of whether such injured person dealt directly or indirectly* with the defendant." (Emphasis added.)

[5] The Federal District Court of Northern California concluded that it lacked authority to issue an injunction against the instant state proceedings, and remanded the matter to the superior court.

denial of a motion to quash, the court held that if a person engages in an out-of-state conspiracy that *is designed to and affects the prices charged* in the forum state, the forum state has jurisdiction of the conspirators. *Kaiser Aetna* v. *Deal*, 86 Cal. App. 3d 886, cited by the paper companies, is inapposite. In *Kaiser*, there was no evidence that the nonresident defendants had engaged in a conspiracy with the intent of causing tortious effects in California. This court (Div. Four) held that the tortious act of the resident conspirator could not be inputed to the nonresidents for purposes of assuming personal jurisdiction.

Contrary to the contentions of the paper companies, the holding in *Maricopa, supra*, was not superceded or eliminated by *World-Wide Volkswagen Corp.* v. *Woodson*, 62 L.Ed. 2d 490. In *World-Wide*, the U.S. Supreme Court, in discussing *International Shoe and McGee*, observed at page 498: "The relationship between the defendant and the forum must be such that it is 'reasonable. . . to require the corporation to defend the particular suit which is brought there.' 326 US, at 317, 90 L Ed. 95, 66 S. Ct. 154, 151 ALR 1057. Implicit in this emphasis on unreasonableness is the understanding that the burden on the defendant, while always a primary concern, will in an appropriate case be considered *in light of other relevant factors, including the forum State's interest in adjudicating the dispute*, see *McGee* v. *International Life Ins. Co.* 355 US 220, 223 . . .; the *plaintiff's interest* in obtaining convenient and effective relief, see *Kulko* v. *Superior Court*, supra, at 92, . . ., *at least when that interest is not adequately protected* by the plaintiff's power to choose the forum, ...; the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies, ...

"The limits imposed on state jurisdiction by the Due Process Clause, in its role as a guarantor against inconvenient litigation, have been substantially relaxed over the years. As we noted in

McGee v. *International Life Ins. Co.*, supra, at 222-223. . . . this trend is largely attributable to a *fundamental transformation in the American economy*. . . ." (Emphasis added.)

World-Wide Volkswagen, supra, involved a negligence action (as distinct from the intentional acts involved here), and the court concluded that the mere fortuitous presence in Oklahoma of a defective automobile sold by a New York retailer and wholesaler was not enough to invoke the in personam jurisdiction of the Oklahoma courts. Here, of course, each paper company admitted deliveries to California consumers. Further, the U.S. Supreme Court, in discussing the requisite "minimum contacts" at page 501, observed that: "This is not to say, of course, that *foreseeability is wholly irrelevant*. But the foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum State. Rather, it is that the *defendant's conduct and connection* with the forum State are such that he should reasonably anticipate being haled into court there. . . . The Due Process Clause, by ensuring the 'orderly administration of the laws,' . . . gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.

"When a corporation 'purposefully avails itself of the privilege of conducting activities within the forum State,' *Hanson* v. *Denckla, supra*, at 253. . . , it has clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State. Hence if the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but *arises* from the efforts of the manufacturer or distributor to *serve, directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those* States. . . ." (emphases added).

Here, the paper companies admittedly elected to indirectly serve the market in California and made sales and deliveries at artificially fixed prices that allegedly harmed California consumers. The paper companies expected an economic benefit from their deliveries in this state. As a result of their alleged price-fixing activities, they reaped an unusually high profit at the expense of California consumers. Thus, the paper companies availed themselves of the privilege of conducting activities that invoked the benefits and protections of the laws of this state (*Cornelison* v. *Chaney*, 16 Cal. 3d 143, 144).

We also note that the deliveries by the paper companies met the alternate test of economic activity in this state. In evaluating their activities, we focus upon the economic reality rather than any mechanical checklist. The court in *Foster* v. *Mooney Aircraft Corp.*, 68 Cal. App. 3d 887, at page 892, stated: "An enterprise obtains the benefits and protection or our laws if as a matter of commercial actuality it has engaged in economic activity within this state. [Citation.] A manufacturer engages in economic activity within a state as a matter of commercial actuality *whenever the purchase or use of its product within the state generates gross income* for the *manufacturer* and is *not so fortuitous or unforeseeable* as to negative the existence of an intent on the manufacturer's part to bring about this result. [Citation.] *That the manufacturer deals with the residents of the state indirectly rather than directly, or requires orders to be accepted at the home office, is not determinative.* [Citations.]" (Emphasis added.) Thus, an analysis of the nonresident manufacturer's activities must focus upon *"the actual economic benefit" derived from such activities.* Where the manufacturer sells his products in circumstances such that it knows or should reasonably anticipate that its products will *ultimately be resold in a particular state,* it should be held to have purposefully availed itself of the market for its products in that state. (*Buckeye Boiler Co.* v. *Superior Court*, 71 Cal. 2d 893, 901.)

When the cause of action *arises out of the forum-related economic activity*, the forum state will entertain jurisdiction over the nonresident defendant. An *isolated act of economic activity*, such as the making and performance of a contract in the forum state, *may be sufficient* to accord the forum state jurisdiction over the defendant when the cause of action is related to that isolated act of economic activity (*McGee* v. *International Life Ins. Co., supra*, 355 U.S. 220, 223; *Martin* v. *Detroit Lions, Inc.*, 32 Cal. App. 3d 472, 475).

The petitions are denied and the alternative writs discharged.

CERTIFIED FOR PUBLICATION

/s/.....
Taylor, P. J.

WE CONCUR:

/s/.....
Miller, J.

/s/.....
Smith, J.

APPENDIX C

FRANCIS O. SCARPULLA
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San Francisco, California 94104
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Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

ESPRIT DE CORP.,
Plaintiff.

V.

ALTON BOX BOARD COMPANY; BOISE CASCADE CORPORATION; CHAMPION INTERNATIONAL, INC.; CONSOLIDATED PACKAGING CORPORATION; THE CONTINENTAL GROUP, INC.; CORCO, INC.; CROWN-ZELLERBACH CORPORATION; DIAMOND INTERNATIONAL CORPORATION; DURA-CONTAINERS, INC.; FIBREBOARD CORPORATION; GEORGIA-PACIFIC CORPORATION; HOERNER WALDORF CORPORATION; INLAND CONTAINER CORPORATION; INTERNATIONAL PAPER COMPANY; INTERSTATE CONTAINER CORPORATION; LONGVIEW FIBRE COMPANY; MACMILLAN BLOEDEL, INC.; THE MEAD CORPORATION; MENASHA CORPORATION; OLIN KRAFT, INC.; OWENS-ILLINOIS, INC.; PACKAGING CORPORATION OF AMERICA; POTLATCH CORPORATION; ST. JOE PAPER COMPANY; ST. REGIS PAPER COMPANY; SOUTHWEST FOREST INDUSTRIES, INC.; STONE CONTAINER CORPORATION; UNION CAMP CORPORATION; U.S. CORRUGATED FIBRE BOX CO.; WESTERN KRAFT EAST, INC.; WESTVACO CORPORATION; WEYERHAUSER COMPANY; WILLAMETTE INDUSTRIES; DOES ONE THROUGH TWENTY FIVE, inclusive,
Defendants.

No. 750975

ANTITRUST COMPLAINT
DAMAGES AND INJUNCTIVE RELIEF

(Jury Demanded)

Plaintiff, Esprit de Corp., on its own behalf and as the representative of the class defined herein, and, demanding trial by jury, complains and alleges as follows:

I
JURISDICTION AND VENUE

1. The jurisdiction of this Court is based on the provisions of Section 16750 of the California Business and Professions Code, to recover treble damages for injuries sustained by it and by the class it represents, arising out of violations by defendants of Section 16720 of the California Business and Professions Code, commonly known as the Cartwright Act.

2. Plaintiff brings this action to recover damages for itself and on behalf of the class it represents, under the provisions of Section 16750(a) of the California Business and Professions Code of Section 382 of the California Code of Civil Procedure.

3. Venue as to each defendant is properly laid in this judicial district pursuant to the provisions of Sections 16750(a) of the California Business and Professions Code and Sections 395(a) and 395.5 of the California Code of Civil Procedure. Each defendant transacts business, has an agent, resides or is found in the City and County of San Francisco. Plaintiff's cause of action arose in part within this judicial district and each defendant is within the jurisdiction of this Court for the purposes of service of process. Many of the unlawful acts done pursuant to the combination and conspiracy alleged herein have been performed and/or carried out within the City and County of San Francisco, and the trade and commerce described in this Complaint is carried on, in part, within the City and County of San Francisco.

II
THE PLAINTIFF

4. Plaintiff Esprit de Corp ("Esprit") is a corporation organized and existing under the laws of the State of California

with its principal offices in the City and County of San Francisco, California.

5. Plaintiff, Esprit, and the class it represents, during the period of time alleged herein, purchased substantial quantities of corrugated containers from one or more defendants indirectly through distributors and/or wholesalers, and has sustained damages as a result of the combination and conspiracy in violation of the Cartwright Act as hereinafter alleged.

III

CLASS ACTION

6. Plaintiff brings this action on its own behalf and on behalf of all persons similarly situated pursuant to Section 382 of the California Civil Code. The class which plaintiff represents is composed of all California businesses who have purchased corrugated containers and/or corrugated sheets indirectly from the defendants herein.

7. The members of this class are in a similar position to that alleged by plaintiff and each class member has a well-defined community of interests in the questions of fact and law arising from the matters alleged herein in that each member of the class purchased corrugated containers and/or corrugated sheets at prices which were artificially inflated by virtue of the acts alleged herein.

8. The class is so numerous that joinder of all class members is impractical. Because of this large number of class members and the expense and burden to the parties and to the Court of litigating each of their claims separately, it is impractical to bring them all before this Court.

9. The rights of the plaintiff and the class members involve common questions of law and fact which predominate over any questions affecting only individual members of the class. Therefore, this class action is superior to any other method for the fair and efficient adjudication of the controversy described herein.

10. The claims of the plaintiff are substantially the same as the claims of all class members except as to the amount of damages that each member of the class has, or will have, sustained; all other questions of fact or law are common to the class, including, but not limited to the nature, scope and extent of the combination and conspiracy as well as the continuing course of conduct in violation of Section 16720 of the California Business and Professions Code.

11. Questions of law or fact which are common to the members of the class predominate over any questions affecting only individual members of this class.

12. Plaintiff's claims are typical of those to be asserted for the other class members and plaintiff, because of its interests in pursuing monetary damages, can and will fairly and adequately represent the interests of the entire class.

IV

DEFENDANTS

13. Plaintiff is ignorant of the true names and capacities of defendants sued herein as DOES One through Twenty-Five inclusive, and therefore sues these defendants by such fictious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously-named defendants is responsible in some manner for the occurrence herein alleged, and that plaintiff's damages herein alleged were proximately caused by such occurrences.

14. Each of the corporations named below is made a defendant herein. Each is organized and exists under the laws of

the state, and has its principal place of business in the city indicated below:

Name of Corporate Defendant	State of Incorporation	Principal Place of Business
Alton Box Board Company	Delaware	Alton, Illinois
Boise Cascade Corporation	Delaware	Boise, Idaho
Champion International, Inc.	New York	Stamford, Conn.
Consolidated Packaging Corporation	Michigan	Chicago, Illinois
The Continental Group, Inc.	New York	New York, New York
Corco, Inc.	Ohio	Worthington, Ohio
Crown-Zellerbach Corporation	Nevada	San Francisco, Calif.
Diamond International Corporation	Delaware	New York, New York
Dura-Containers, Inc.	Delaware	Indianapolis, Ind.
Fibreboard Corporation	Delaware	San Francisco, Calif.
Georgia-Pacific Corporation	Georgia	Portland, Oregon
Hoerner Waldorf Corporation	Delaware	St. Paul, Minnesota
Inland Container Corporation	Indiana	Indianapolis, Ind.
International Paper Company	New York	New York, New York
Interstate Container Corporation	New York	New York, New York
Longview Fibre Company	Delaware	Longview, W. Va.
MacMillan Bloedel, Inc.	Alabama	Stamford, Conn.
MacMillan Bloedel Containers, Inc.	Delaware	Chicago, Illinois
The Mead Corporation	Ohio	Dayton, Ohio
Menasha Corporation	Wisconsin	Neenah, Wisconsin
Olinkraft, Inc.	Delaware	West Monroe, La.
Owens-Illinois, Inc.	Ohio	Toledo, Ohio
Packaging Corporation of America	Delaware	Evanston, Illinois
Potlatch Corporation	Delaware	San Francisco, Calif.
St. Joe Paper Company	Florida	Jacksonville, Florida
St. Regis Paper Company	New York	New York, New York

Name of Corporate Defendant	State of Incorporation	Principal Place of Business
Southwest Forest Industries, Inc.	Nevada	Phoenix, Arizona
Stone Container Corporation	Illinois	Chicago, Illinois
Union Camp Corporation	Virginia	Wayne, New Jersey
U. S. Corrugated Fibre Box Co.	Indiana	Indianapolis, Ind.
Western Kraft East, Inc.	Oregon	Bellmawr, New Jersey
Westvaco Corporation	Delaware	New York, New York
Weyerhaeuser Company	Washington	Tacoma, Washington
Willamette Industries	Oregon	Portland, Oregon

15. During all or part of the period covered by this Complaint, each of the defendant corporations were engaged in the business of manufacturing and selling corrugated containers and/or corrugated sheets to wholesalers who resold such products to plaintiff and the other members of the class.

V
CO-CONSPIRATORS

16. Various corporations, firms and individuals not named as defendants in this Complaint participated as co-conspirators in the violations alleged and performed acts and made statements in furtherance thereof.

17. At all times relevant hereto, plaintiff had no knowledge of the combination and conspiracy alleged herein, or of any facts which might have led to the discovery thereof. Plaintiff and the other members of the class it represents could not have uncovered the conspiracy at an earlier date by the exercise of due diligence, inasmuch as the unlawful conspiracy was actively concealed by defendants through their adoption of elaborate schemes, including their resort to secrecy to avoid detection.

VI
NATURE OF TRADE AND COMMERCE

18. Corrugated containers are made from that category of paperboard referred to as "container board." Container board

and corrugated sheets consist of an inner fluted sheet — i.e., the corrugating medium — glued between two liners of flat facing. In the manufacturing of corrugated containers, container board is printed, scored, creased and dye-cut. Joints are fastened by stitching with wire, by taping with gummed tape, or by gluing. Generally, corrugated containers are shipped to businesses in a knocked-down state and are then set up by the user. Corrugated containers are manufactured in a large number of sizes and shapes and are tested for degree of strength, weights and resistence to liquid and temperature.

19. Corrugated containers are used as shipping containers by a wide variety of industries because they are strong and lightweight. Corrugated containers accounted for approximately 18% of all packaging sales in 1975. Buyers of corrugated containers include, among others, processors of food and beverage products, manufacturers of paper and printed materials, glass and ceramic products, metals and machinery, chemicals, paints, drugs, soaps and cosmetics, appliances and electrical equipment, clothing, textiles and leather, rubber and plastic, furniture and wood, and transportation equipment.

20. During all or part of the period of time covered by this Complaint, corrugated containers and corrugated sheets were sold in California, including the City and County of San Francisco, by the defendant corporations.

VII
VIOLATIONS ALLEGED

21. Beginning some time prior to 1960, the exact date being unknown to plaintiff, and continuing thereafter up to and including the date of the filing of this Complaint, the defendants and their co-conspirators have engaged in a continuing combination and conspiracy in unreasonable restraint of the aforesaid trade and commerce in violation of Section 16720 of the California Business and Professions Code. Additionally, defendants have combined and conspired to monopolize, have attempted to

monopolize, and have monopolized such trade and commerce in violation of Section 16720 of the California Business and Professions Code.

22. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding and concert of action among the defendants and their co-conspirators, the substantial terms of which were, among others, to fix, raise, maintain, and stabilize the prices of corrugated containers and corrugated sheets in the areas in which the defendants sold these products.

23. In formulating and effectuating the aforementioned combination and conspiracy to restrain trade in violation of Section 16720 of the California Business and Professions Code, the defendants and their co-conspirators did those things which, as heretobefore alleged, they combined and conspired to do, including, among other things, the following:

(a) Disclosed to other members of the conspiracy, prices charged or quoted, or the price to be charged or quoted to buyers of corrugated containers and corrugated sheets, as well as other information relevant to the pricing of corrugated containers and corrugated sheets;

(b) Received from other members of the conspiracy, prices charged or quoted, or the price to be charged or quoted to buyers of corrugated containers and corrugated sheets, as well as other information relevant to the pricing of corrugated containers and corrugated sheets;

(c) Submitted non-competitive bids or quotations or no bids or quotations to buyers of corrugated containers and corrugated sheets;

(d) Agreed with other members of the conspiracy upon increases in prices of corrugated containers and corrugated sheets; and

(e) Took steps to enforce compliance with the aforesaid combination and conspiracy.

VIII

EFFECTS

24. The aforesaid combination and conspiracy has had the following effects, among others:

(a) All purchasers of corrugated containers and corrugated sheets, whether directly or indirectly purchased, have been deprived of free and open competition in the purchase of corrugated containers and corrugated sheets; and

(b) Competition in the sale of corrugated containers and corrugated sheets among the defendants and their co-conspirators been restrained and prices of corrugated containers and corrugated sheets have been raised to, and fixed, maintained, and stabilized at artificial and non-competitively high levels.

IX

INJURY TO PLAINTIFF

25. During and throughout the period of the aforesaid combination and conspiracy, plaintiff and the members of the class indirectly purchased substantial quantities of corrugated containers and corrugated sheets from one or more of the defendants herein. By reason of the aforesaid combination and conspiracy, those purchases were made at prices higher than the prices which plaintiff and the members of the class would have paid in the absence of any such combination or conspiracy.

26. As a result of the aforesaid combination and conspiracy, plaintiff and each class member has sustained substantial losses and damages to its business and property in an amount which is presently undetermined. When these amounts have been ascertained, plaintiff will request leave of this Court to insert the amount thereof.

X

PRAYER

WHEREFORE, Plaintiff prays:

1. That this Court determine as soon as practicable that this action may be maintained as a class action, and that reasonable notice of this action be given to the members of the class.

2. That the Court adjudge and decree that the aforesaid combination and conspiracy, and acts done in furtherance thereof, were and are an unlawful restraint of trade an commerce in violation of Section 16720 of the California Business and Professions Code.

3. That the Court adjudge and decree that the defendants have combined and conspired to monopolize trade and commerce in violation of Section 16720 of the California Business and Professions Code.

4. That plaintiffs and other members of the class recover three-fold the damages determined to have been sustained by each of them respectively as a result of the conduct of the defendants complained of herein, and that joint and several judgment be entered against defendants, and each of them, for the amount so determined.

5. That defendants and all other persons acting on their behalf or in concert with them be perpetually enjoined and restrained from conducting, maintaining, renewing or carrying on the aforesaid combination and conspiracy or any other combination and conspiracy, having a similar purpose or effect in restraining competition in the sale of corrugated containers or corrugated sheets.

6. That plaintiffs recover from defendants the cost of this suit and reasonable attorney fees in accordance with Section 16750(a) of the California Business and Professions Code.

7. That plaintiff and the class have such other relief as the Court may deem just and proper.

DATED: March 16, 1979

FRANCIS O. SCARPULLA
JAMES M. GARLOCK
DAVID A. SHERMAN
SCARPULLA & GARLOCK

By /s/ .....
Francis O. Scarpulla
Attorneys for Plaintiffs

APPENDIX D

AFFIDAVIT OF ST. JOE PAPER COMPANY

STATE OF FLORIDA
COUNTY OF DUVAL

Before me the undersigned authority, on this day personally appeared W. F. Hudson, Vice President of St. Joe Paper Company, known to me to be the person whose name is subscribed to the following instrument and having been duly sworn, deposes and states as follows.

My name is W. F. Hudson, Vice President of St. Joe Paper Company. I am over the age of 18 and am authorized to make this affidavit on behalf of the Company. I am competent to testify on the facts stated herein, and I have personal knowledge of the facts stated herein.

St. Joe Paper Company is a Florida Corporation with its principal place of business in Jacksonville, Florida. It has never sought to qualify to do business in California; nor has it ever maintained any branches or offices in California; nor has it ever owned any real property or other assets in California. The Company's offices and 19 corrugated container plants are all located in the eastern half of the United States. The westernmost offices are in Chicago, Illinois; Memphis, Tennessee; and Dallas, Texas. No officer, director, employee, agent or representative of St. Joe was a resident of California at the time of the allegations in the complaint brought by Espirit de Corp., nor are any such individuals residents of California today.

Two St. Joe salesmen have called on national companies headquartered in California, three or four times a year, but they have made these calls only to solicit business in areas of the nation outside of California where St. Joe's plants are located.

St. Joe's only other contact with California occurs through sales to one customer, E.S.B., Inc., which has its corporate headquarters and principal place of business in

Philadelphia, Pennsylvania. E.S.B. is a national company that manufactures electrical storage batteries. It enters into one purchase order with St. Joe for corrugated containers that E.S.B. uses in 16 different states. These containers are manufactured at the St. Joe plant in Memphis, Tennessee, and are all sold at the same price, F.O.B. Memphis. St. Joe's salesmen call on E.S.B. at its corporate headquarters where they negotiate and execute the purchase order. One of the 16 states where E.S.B. uses St. Joe's corrugated containers is California. After E.S.B. accepts title to the containers at the St. Joe plant in Memphis, E.S.B. pays all freight charges beyond St. Joe's Memphis territory to have the containers shipped by common carrier to the Los Angeles area of California. E.S.B. pays for the corrugated containers through its corporate headquarters in Philadelphia. St. Joe has received no payment whatsoever from E.S.B. in California. Neither has St. Joe sent any employee to make sales or service calls on E.S.B. in California.

ST. JOE PAPER COMPANY

By /s/ .....
W. F. Hudson,
Vice President

Sworn to and subscribed before
me this the 28th day of
August, 1980.

/s/ .....
Notary Public State of Florida
at Large

My commission expires:

Office-Supreme Court, U.S.
FILED
DEC 18 1981
ALEXANDER L. STEVAS,
CLERK

No. 81-1033

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

ST. JOE PAPER COMPANY,

Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
in and for the
County of San Francisco,
and
ESPRIT DE CORP.,

Respondents

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

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STATEMENT OF THE CASE

Prior to any discovery, Petitioner-Defendant St. Joe Paper Co. ("St. Joe"), and one of its co-defendants, Consolidated Packaging Corporation ("CPC"), moved the San Francisco Superior Court for an order quashing service of the summons and complaint filed by Respondent-Plaintiff Esprit de Corp. ("Esprit").

Upon the denial of that motion, St. Joe and CPC appealed to the California District Court of Appeals, which court also found the required "minimum contacts" present to submit St. Joe and CPC to California's jurisdiction. See, Petition for Certiorari, Appendix B.

The California Supreme Court refused *certiorari.* See, Petition for Certiorari, Appendix A.

St. Joe petitioned this court for a Writ of Certiorari to the Supreme Court of the State of California.[1]

ARGUMENT

A California court can properly exercise personal jurisdiction over a non-resident, corporate defendant where "minimum contacts" exist between that defendant and the forum state. *International Shoe Co.* v. *State of Washington*, 326 U.S. 310, 316 (1945). The reason for this rule is to protect a defendant from litigation in a distant, inconvenient forum and to insure that states do not overreach their limits as co-equal sovereigns in the federal system. *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 100 S.Ct. 559, 564 (1980).

St. Joe's contacts with California must be such that maintaining this antitrust action in that State's courts is reasonable and just under all of the circumstances, including California's interest in adjudicating the controversy. *International Shoe Co.* v. *State of Washington, supra,* at pp. 316-317; *McGee* v. *International Life Insurance Co.* 355 U.S. 220 (1951).

Here, St. Joe has been charged with a nation-wide price-fixing scheme, which impact has been felt by California's consumers. St. Joe admits—and the California Courts have found—business and personal contacts with California consumers. See, Petition for Certiorari, Appendix B, at pp. B-3 -B-4.

St. Joe's salespersons call on customers located in California to solicit sales of the very product in issue in this lawsuit—corrugated containers. See, Affidavit of St. Joe Paper Company, Appendix D to Petition for Certiorari. Additionally, St. Joe had direct sales to at least one California business entity. *Ibid.*

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1. CPC did not seek a Writ of Certiorari to this Court.

Esprit respectfully suggests that St. Joe has the requisite minimum contacts with California for that State's courts to exercise personal jurisdiction over St. Joe in an action whose substance is based upon intentional wrongdoing, rather than mere negligence. See, *International Shoe Co.* v. *State of Washington,* supra; *McGee* vs. *International Life Insurance Co., supra; World-Wide Volkswagen Corp.* v. *Woodson, supra.*

CONCLUSION

For the above stated reasons, Esprit respectfully suggests that this Court should deny St. Joe's Petition for a Writ of Certiorari.

Dated: December 11, 1981

Francis O. Scarpulla
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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of December, 1981, three copies of the Petition for a Writ of Certiorari were mailed, with first-class postage prepaid, to the following parties and counsel of record:

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(Counsel for Consolidated Packaging Corporation)

I further certify that all parties required to be served have been served.

Francisco O. Scarpulla